



10/634,275

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: WOOLFORD Examiner: W. NEUDER  
Serial No.: 10/634,275 Group Art Unit: 3672  
Filed: AUGUST 5, 2003 Docket No.: 3616.111USC4  
Title: COMPOSITE MASONRY BLOCK

CERTIFICATE UNDER 37 CFR 1.10:

"Express Mail" mailing label number: EV408489400US

Date of Deposit: October 4, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 

Name: David Ortiz

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT (37 C.F.R. § 1.97(c))

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**23552**

PATENT TRADEMARK OFFICE

Dear Sir:

With regard to the above-identified application, the following information is being brought to the attention of the Examiner in order to comply, to the fullest extent possible, with Applicant's duty of candor under 37 CFR 1.56.

Litigation is currently pending between the Assignee, Anchor Wall Systems, Inc. (hereinafter "Anchor"), and Rockwood Retaining Walls, Inc. (hereinafter "Rockwood") involving Anchor's U.S. Patents 5,490,363; 5,704,183; 5,709,062; and 5,711,129. Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc. et al.; United States District Court, District of Minnesota, Civil Action No. 99-1356 (DSD/JMM). Each of those patents has common subject matter to the present application and has been cited to and considered by the Examiner in the present application.

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In the litigation, Rockwood has alleged that certain of the claims of U.S. Patents 5,490,363, 5,704,183, and 5,711,129 are invalid based upon an alleged conception of a version of Rockwood's "Classic" block at least as early as January 1992. In addition, Rockwood has alleged that the same claims of U.S. Patents 5,490,363, 5,704,183, and 5,711,129 are invalid based on an alleged conception and reduction to practice of a "Classic" style block, with the conception and reduction to practice occurring prior to the earliest effective filing date of U.S. Patent 5,490,363. Furthermore, Rockwood has alleged that U.S. Patents 5,704,183 and 5,711,129 are not entitled to the effective filing date of U.S. Patent 5,490,363, and that such patents are invalid based on an alleged conception, reduction to practice, and sale of a "Classic" style block prior to their respective effective filing dates. Rockwood also contends that its "Classic" style block was known or used by others before Anchor's invention date(s).

However, the documents and other evidence produced by Rockwood to support its allegations are subject to a court-mandated protective order that prevents Anchor from disclosing the documents and evidence relied upon by Rockwood to the U.S. Patent and Trademark Office. Anchor has requested that Rockwood permit Anchor to submit the documents and other evidence to the U.S. Patent and Trademark Office, but Rockwood has not given its permission to do so.

Anchor has denied, and continues to deny, Rockwood's invalidity allegations based on the "Classic" style block. It is Applicant's belief that the documents and other evidence relied upon by Rockwood concerning prior conception do not present a prima facie case of unpatentability of the presently pending claims.

Rockwood also contends that certain claims in Anchor's '363, '183, and '129 patents are invalid as anticipated by Japan Unexamined Utility Model Publication 59-167842 ("the Japanese Reference"). Anchor has denied, and continues to deny, this contention. Anchor points out that, among other things, the unit pictured in the Japanese Reference does not have an inset that extends from the top surface of the unit to the bottom surface of the unit.

Two translations of JP 59-167842 are enclosed. One translation was obtained by Anchor. The second translation, labeled M&H 02563-02583, was provided to Anchor by Rockwood. Applicant does not vouch for the accuracy of either translation.

A Federal Circuit decision (340 F.3d 1298 (Fed. Cir. 2003)) and a U.S. District Court decision (252 F.Supp.2d 838 (Dist. of MN 2002)) that construe claim language used in Anchor's '363, '183, and '129 patents are enclosed. See, e.g., pages 7-9 of the enclosed copy of the

Federal Circuit decision (340 F.3d 1298 at 1307-1310) and pages 4-9 of the enclosed copy of the District Court decision (252 F. Supp. 2d 838 at 843-848).

This information is being disclosed by Applicant to the fullest extent permitted under the protective order, and to comply, to the fullest extent possible, with Applicant's duty of candor under 37 CFR 1.56, so that the Examiner and any interested member of the public are made aware of this information and so the Examiner can consider this information, to the fullest extent possible, while determining the patentability of the present claims.

This statement should be considered because it is submitted after the mailing date of a first Office Action on-the-merits or a first Office Action after filing a Request for Continued Examination under 37 C.F.R. § 1.114 or a CPA under 37 C.F.R. § 1.53(d), but before the mailing date of: i) a final action under 37 C.F.R. § 1.113; ii) a Notice of Allowance under 37 C.F.R. § 1.311; or iii) an action that otherwise closes prosecution on the application. Enclosed is a check in the amount of \$180.00 for consideration of this Information Disclosure Statement.

No representation is made that this information is "prior art" within the meaning of 35 U.S.C. §§ 102 and 103 and Applicant reserves the right, pursuant to 37 C.F.R. § 1.131 or otherwise, to establish that this information is not "prior art."

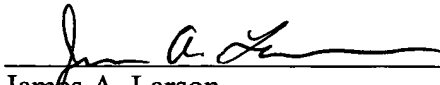
Consideration of this information is respectfully requested. Pursuant to the provisions of M.P.E.P. 609, it is requested that the Examiner return the enclosed paper with the next official communication with an indication that this information has been considered.

Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: October 4, 2004

  
James A. Larson  
Reg. No. 40,443

Date Mailed: OCTOBER 4, 2004

Sheet 1 of 1

<b>FORM 1449*</b> <b>INFORMATION DISCLOSURE STATEMENT</b>  <b>IN AN APPLICATION</b>  (Use several sheets if necessary)	<b>Docket Number:</b> 3616.111USC4	<b>Application Number:</b> 10/634,275
	<b>Applicant:</b> WOOLFORD	
	<b>Filing Date:</b> 08/05/2003	<b>Group Art Unit:</b> 3672

I have considered the information contained in the accompanying Information Disclosure Statement.

Examiner: \_\_\_\_\_ Date Considered: \_\_\_\_\_

